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No Duty Owed by Club in Foul Ball Promotion

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Abstract: The Association's duties and responsibilities under the terms of the agreement with the city included, among other things, ticket sales, concessions, merchandise sales, food service, promotions, and special events at the stadium. [...] the court found that a baseball club's duty to protect spectators from foul balls was limited to "the most dangerous section of the field-the area behind home plate-and the screening that is provided must be sufficient for those spectators who may be reasonably anticipated to desire protected seats on an ordinary occasion" (Akins v. Glens Falls City School Dist, 1981).

Links: [Obtain full text from Shapiro Library](#)

Full text: Haymon v. Pettit

New York Court of Appeals

9 NYSd 324

November 20, 2007

Recently, the New York Court of Appeals reexamined the issue of a baseball club's duty to its fans. The court held that a baseball club was not liable to a minor who was injured while allegedly chasing a foul ball onto a street in conjunction with a team's ticket giveaway promotion. In this instance, a foul ball was chased by a teenager outside the park onto a public street where he was hit by a car.

Facts

The City of Auburn owns the Auburn Doubledays-a Class A minor-league baseball team in the New York-Penn League-as well as Falcon Park, the stadium where the Doubledays' home games are played. Through an operating agreement with the city, the Auburn Community Non-Profit Baseball Association, Inc. (the Association) was retained to act as the city's agent to manage and operate the Doubledays and Falcon Park. The Association's duties and responsibilities under the terms of the agreement with the city included, among other things, ticket sales, concessions, merchandise sales, food service, promotions, and special events at the stadium.

The team had a long-standing, regularly advertised promotion that awarded two free tickets to a game to any fan who returned a foul ball. On June 30, 2000, the plaintiff, a 14-year-old, was outside the ballpark during a Doubledays game when a foul ball was hit outside the stadium and bounced into an adjacent street, ultimately landing in a parking lot across from the stadium. While pursuing the ball, the plaintiff was struck by an oncoming car, driven by the defendant, Pettit. The plaintiff suffered serious injuries as a result of the accident.

Case History

The plaintiff and his mother brought a negligence action in Cayuga County Supreme Court. The Association, one of the codefendants in the case, filed a motion for summary judgment on the ground that it owed no duty to the injured party. The New York Supreme Court denied the motion finding that the Association owed a duty to its fans outside the stadium "to prevent them from chasing foul balls into the nearby street, a foreseeably dangerous condition it took part in creating" (Haymon v. Pettit, 2005).

The appellate division for the fourth department reversed the Supreme Court's decision and dismissed the complaint on the motion. The appellate division ruled that "The Defendant, as an adjoining landowner, owed no legal duty to the plaintiff's son under the circumstances of this case."The court added that, "Although it may have been foreseeable that a person would run into the street to pursue a foul ball, it is well established that 'foreseeability of harm does not define duty'" (Haymon v. Pettit, 2007). On appeal, the New York Court of

Appeals affirmed the appellate division's decision granting the Association's motion for summary judgment.

Analysis

In reaching its conclusion, the New York Court of Appeals advanced six reasons in support of its position. Highlighting that the accident did not occur on property controlled by the Association, the court stated, "an owner or occupier of land generally owes no duty to warn or protect others from a dangerous condition on adjacent property unless the owner created or contributed to such a condition" (*Galindo v. Town of Clarkstown*, 2004).

Second, the court found that a baseball club's duty to protect spectators from foul balls was limited to "the most dangerous section of the field-the area behind home plate-and the screening that is provided must be sufficient for those spectators who may be reasonably anticipated to desire protected seats on an ordinary occasion" (*Akins v. Glens Falls City School Dist*, 1981). The *Akins* court concluded that the operator "is not an insurer of the safety of its spectators" because "the nature of the game-and the spectators' involvement in it-is such that absolute protection around the entire stadium would be impractical."

The Court of Appeals also commented that the plaintiff's argument that the risks were foreseeable in light of the foul ball promotion was flawed because it presupposed the existence of a duty. The court found that the danger of crossing a street existed independent of the promotion, and the Association's lack of control over the public street acted against the finding of a duty in this case.

Additionally, the court made an analogy to an earlier decision it rendered involving a hotel that was located near a public beach. In that case, although the hotel encouraged and facilitated the use of the beach, the court found that the hotel owed no duty to the plaintiff after the plaintiff drowned in the rough waters along the beach. In *Haymon*, the Court of Appeals concluded that the Association's foul ball "promotion did no more to contribute to an inherent risk than did the *Meridien Copacabana Hotel in Darby*" (*Darby v. Compagnie Natl. Air France*, 2001).

Moreover, the court held that despite the incentive of free tickets, the Association did not create the dangerous condition. The court stressed that there are risks inherent to crossing the street, and that the promotion only rewarded the retrieval (emphasis added) of foul balls.

Finally, the court indicated that if a duty were to be found in this case, it would create potentially limitless liability on the part of teams and stadium operators, and such an onerous ruling would not be consistent with the "practical realities" of the game.

Discussion

The Court of Appeals gave particular attention to the fact that the record was unclear as to whether the plaintiff was actually participating in the foul ball promotion when the accident occurred. As the respondent's appellate brief pointed out, the plaintiff had retrieved a number of foul balls outside Falcon Park in the past, and had chosen to keep them in his extensive baseball collection, instead of redeeming them for free tickets. Also, the significance of the plaintiff's actions, not only in crossing the street without due care, but in wearing headphones while doing it, and the fact that the driver of the vehicle was legally intoxicated, make the plaintiff's case against the Association less sympathetic.

These factors make it unclear whether this decision will be interpreted to only apply to this specific factual pattern, or whether this case creates blanket protection for teams for any acts that occur outside the stadium premises. However, facility owners and operators and event managers must be able to foresee any possible consequences of their promotions and exercise due care in conducting them.

Sidebar

Disclaimer

The comments regarding the case presented here are generalized thoughts and not hard law. The cases in Law Review are illustrative of situations that can happen and how the courts have responded to the circumstances. The generalized thoughts may not apply or be proper in all states and jurisdictions and under all circumstances.

Finally, it is important to understand that the tips provided may not apply in your state or jurisdiction.

References

References

Akins v. Glens Falls City School Dist, 53 NY2d 325 (1981).

Darby v. Compagnie National Air France, 96 NY2d 343 (2001).

Galindo v. Town of Clarkstown, 2 NY3d 633 (2004).

Haymon v. Pettit, Sup Ct, Cayuga County, October 14, 2005, Fandrich, M., index No.: 01-834.

Haymon v. Pettit, 37 AD3d 1194 (4th Dep't 2007), aff'd, 9 NY3d 324 (2007).

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